

Amendment No. 2 to HB1095

Hazlewood
Signature of Sponsor

AMEND Senate Bill No. 702*

House Bill No. 1095

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, is amended by adding the following as a new part:

68-11-2201. Part definitions.

As used in this part:

(1) "Commission" means the health facilities commission;

(2) "Controlling person" means:

(A) A business entity, officer, program administrator, or director whose responsibilities include the direction of the management or policies of a temporary healthcare staffing agency; and

(B) An individual who, directly or indirectly, beneficially owns an interest in a corporation, partnership, or other business association that is a controlling person;

(3) "Direct care staff":

(A) Means an individual who:

(i) Is a medication aide, medication technician, certified nursing assistant, licensed practical nurse, or registered nurse; and

(ii) Contracts with or is employed by a temporary healthcare staffing agency to provide direct care services to residents or patients in a healthcare facility; and

(B) Does not include:

(i) An individual who is engaged in the practice of medicine and surgery or osteopathic medicine and surgery and who is licensed under title 63, chapter 6 or 9; or

(ii) The practice of nursing by a certified nurse practitioner or an advanced practice registered nurse certified or registered under title 63, chapter 7;

(4) "Executive director" means the executive director of the health facilities commission;

(5) "Healthcare facility" means a nursing home or an assisted-care living facility as those terms are defined by § 68-11-201;

(6) "Person" means an individual, firm, corporation, partnership, or association; and

(7) "Temporary healthcare staffing agency" or "agency":

(A) Means a person, or other business entity:

(i) Engaged in whole or in part in the business of providing or procuring temporary employment in healthcare facilities for direct care staff; or

(ii) That operates a digital website or digital smartphone application that facilitates the provision of the engagement of direct care staff and accepts requests from healthcare facilities for direct care staff through its digital website or digital smartphone application; and

(B) Does not include:

(i) An individual who engages, only on the individual's own behalf, to provide the individual's services on a temporary basis to

a healthcare facility without the use or involvement of a temporary healthcare staffing agency; or

(ii) An agency operated by a hospital, assisted-care living facility, or nursing home as those terms are defined by § 68-11-201, or an affiliate of a hospital, assisted-care living facility, or nursing home, if the purpose of the agency is solely procuring, furnishing, or referring temporary or permanent direct care staff for employment at that healthcare provider, or any affiliates under common ownership.

68-11-2202. Minimum requirements and record retention.

(a) A temporary healthcare staffing agency shall:

(1) Retain documentation that each direct care staff contracted with or employed by the agency meets all licensing, certification, training, and continuing education standards for the position in which the direct care staff will be working, in compliance with any federal, state, or local requirements;

(2) In response to a request by a healthcare facility to whom direct care staff are supplied to work, provide documentation that each direct care staff meets the requirements of subdivision (a)(1);

(3) Comply with all pertinent requirements relating to the health and other qualifications of personnel employed in a healthcare facility;

(4) Carry an employee dishonesty bond in an amount not less than ten thousand dollars (\$10,000) per occurrence;

(5) Maintain coverage for workers' compensation for all direct care staff;
and

(6) Retain all records for five (5) calendar years and make all records immediately available to the commission upon request.

(b) A temporary healthcare staffing agency shall provide any records, unless otherwise privileged, pertinent to an investigation conducted by any of the following:

(1) A representative of adult protective services actively involved in the conduct of an investigation pursuant to title 71, chapter 6;

(2) The department of health or its representatives, designees, or employees under § 68-11-117, in the same manner that a healthcare provider must make records available;

(3) The health facilities commission if related to a violation of this part or any law or regulation of the board for licensing healthcare facilities relating to a healthcare facility with which the agency contracts; and

(4) Any law enforcement agency conducting a criminal investigation, including, but not limited to, the medicaid fraud control unit.

(c) No later than December 31, 2023, a temporary healthcare staffing agency presently doing business in this state shall provide notice to the health facilities commission identifying its business entity and any controlling person.

68-11-2203. Prohibited contractual provisions.

(a) A temporary healthcare staffing agency shall not:

(1) Restrict in any manner the employment opportunities of any direct care staff that is contracted with or employed by the agency, including, but not limited to, using contract buy-out provisions or contract non-compete clauses;

(2) Require the payment of liquidated damages, employment fees, or other compensation in any contract with direct care staff or a healthcare facility, if the direct care staff is hired as a permanent employee of the healthcare facility; or

(3) Solicit or recruit the current staff of a healthcare facility, or require, as a condition of employment, assignment, or referral, that the agency direct care staff recruit new employees for the agency from among the current employees of

the healthcare facility to which the agency direct care staff are employed, assigned, or referred.

(b) The provisions of a contract between a temporary healthcare staffing agency and either direct care staff or a healthcare facility that violate this part are void and unenforceable in a court of law.

68-11-2204. Requirement for registration.

(a) A temporary healthcare staffing agency shall not be operated, maintained, or advertised in this state without registering with the commission. Each separate location of a temporary healthcare staffing agency shall register and obtain a separate registration.

(b) Each application to operate a temporary healthcare staffing agency must be made on forms adopted by the commission. The commission shall promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to establish the application process for temporary healthcare staffing agency registration. The application must include:

(1) The names and addresses of any controlling person;

(2) The names and addresses of any owner who does not meet the definition of a controlling person. If the owner is a corporation, then the application must include copies of the corporation's articles of incorporation and current bylaws, and the names and addresses of its officers and directors;

(3) The names and addresses of the person or persons under whose management or supervision the temporary healthcare staffing agency will be operated;

(4) Satisfactory proof that the temporary healthcare staffing agency will maintain compliance with this part;

(5) A policy and procedure that describes how the temporary healthcare staffing agency's records will be immediately available to the commission upon request; and

(6) Any other relevant information the commission determines is necessary to properly evaluate an application for registration.

(c) The commission may establish a registration fee in an amount sufficient to fund the projected costs of administering registration of temporary healthcare staffing agencies, but in no case may such fee exceed five thousand dollars (\$5,000).

(d) The commission shall deny an application for temporary healthcare staffing agency registration for failure to provide the information required by this section.

(e) A registration issued by the commission to an agency is effective for a period of one (1) year from the date of its issuance unless the registration is revoked for noncompliance with this section. If a controlling person changes, the temporary healthcare staffing agency is sold, or management is transferred, then the registration of the agency is voided and the new controlling person, owner, or manager may apply for a new registration.

68-11-2205. Reports.

(a) A temporary healthcare staffing agency shall submit biannual reports to the commission.

(b) The commission shall promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to establish requirements for temporary healthcare staffing agencies to submit biannual reports. The biannual reports must include, but are not limited to, the following:

(1) The name, professional licensure or certification, and assigned healthcare facility for each direct care staff;

(2) The length of time the direct care staff has been assigned to each healthcare facility and the total hours worked;

(3) A detailed listing of the average amount charged during each reporting period to a healthcare facility for each category of direct care staff providing services to the healthcare facility;

(4) A detailed listing of the average amount paid during each reporting period to direct care staff for their services for each category of direct care staff providing services to the healthcare facility;

(5) The agency's certification that each direct care staff contracted to a healthcare facility during the reporting period had a current, unrestricted license or certification in good standing and met the training and continuing education standards for the position with the healthcare facility throughout the entirety of the reporting period; and

(6) The agency's certification that each direct care staff contracted to a healthcare facility had successfully completed all background and abuse registry checks required by federal and state law and rule relating to the position and healthcare facility in which the direct care staff was placed or assigned during the reporting period.

(c) Biannual reports required by this section are considered proprietary information that is confidential and not subject to public inspection pursuant to title 10, chapter 7, part 5. However, the commission shall annually prepare reports of aggregate data that does not identify any data specific to any temporary healthcare staffing agency.

68-11-2206. Penalties.

(a) The commission shall revoke the registration of a temporary healthcare staffing agency that knowingly provides to a healthcare facility a direct care staff with an illegally or fraudulently obtained or issued diploma, registration, license, certificate, criminal records check, or other item required for employment by a healthcare facility. The commission shall immediately notify the agency that its registration will be revoked in thirty (30) days.

(b) The commission shall not issue or renew a temporary healthcare staffing agency registration if a controlling person's registration has been revoked due to noncompliance with requirements in this section within five (5) years from the date of nonrenewal or revocation.

(c) If a temporary healthcare staffing agency fails to comply with the reporting requirements in § 68-11-2205, then the commission shall assess a penalty of one hundred dollars (\$100) for each day such agency is not in compliance. The commission may waive, in whole or in part, any penalty upon a determination that there is good cause for such a waiver.

(d) The commission may suspend or revoke the registration of, or impose a fine not to exceed five thousand dollars (\$5,000) per violation, against a temporary healthcare staffing agency that fails to comply with this part, or the rules promulgated by the commission in accordance with this part.

(e) A temporary healthcare staffing agency may request a contested case hearing to appeal a denial of an application for registration, revocation of registration, or an imposed monetary penalty.

(f) The contested case hearing required by this section must be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, except as otherwise provided in this section.

(g) Contested cases initiated pursuant to this section must be heard by an administrative law judge sitting alone. Petitions for contested cases received by the commission must be forwarded immediately to the administrative division of the secretary of state's office for assignment to an administrative law judge.

(h) Judicial review of the executive director's final order in a contested case is as provided by law.

68-11-2207. Disciplinary proceedings - payment of investigation and prosecution costs.

(a) If the commission imposes sanctions on a temporary healthcare staffing agency following a disciplinary proceeding, then the commission may require a temporary healthcare staffing agency to pay the actual and reasonable costs of the investigation and prosecution of the disciplinary proceeding, which include, but are not limited to, the following:

(1) All costs absorbed by the commission in connection with the investigation and prosecution of the matter, including all investigator time, travel, and lodging incurred during the prosecution;

(2) All costs absorbed by the commission for the use of facilities and personnel for prosecution of the matter;

(3) All costs assessed against the commission for the appearance fees, transcripts, time, travel, and lodging of administrative law judges, court reporters, and witnesses required in the prosecution of the matter; and

(4) All costs attributed to and assessed against the commission in connection with the prosecution of the matter, including all attorney and paralegal time, travel, and lodging incurred during the prosecution of the matter.

(b) The commission shall include in any order in which the payment of costs has been assessed an amount that is the maximum amount owed by the temporary healthcare staffing agency at the time the order is entered. Prior to the expiration of sixty (60) days from the effective date of the order, the commission shall send to the temporary healthcare staffing agency, by certified mail, return receipt requested, and by regular United States mail, a final costs assessment that does not exceed the maximum amount in the order.

(c) All fines, costs, and registration fees paid to the commission under this part remain with the commission, and must be used to fund the projected costs of administering the registration of temporary healthcare staffing agencies.

68-11-2208. Authority to promulgate rules.

The executive director shall promulgate rules to effectuate this part no later than September 1, 2023. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and may be promulgated as emergency rules pursuant to § 4-5-208.

SECTION 2. Tennessee Code Annotated, Section 47-18-5103(a)(1), is amended by adding the following as a new subdivision:

(l) Temporary healthcare staffing provided by a temporary healthcare staffing agency as defined by § 68-11-2201.

SECTION 3. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4.

(a) For the purposes of rulemaking, this act takes effect upon becoming a law, the public welfare requiring it.

(b) Sections 68-11-2204, 68-11-2205, 68-11-2206, and 68-11-2207 of SECTION 1 take effect July 1, 2024, the public welfare requiring it.

(c) The remainder of this act takes effect upon becoming a law, the public welfare requiring it.